

**THE REPUBLIC OF UGANDA  
PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS  
APPEALS TRIBUNAL**

**APPLICATION NO. 31 OF 2024**

**BETWEEN**

**JILK CONSTRUCTION CO LIMITED :::::::::::::::::::::::::::::::APPLICANT**

**AND**

**KIRA MUNICIPAL COUNCIL:::::::::::::::::::::::::::::::::::::RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE  
PROCUREMENT FOR THE CONSTRUCTION OF SELECTED  
ROADS IN KIRA AND MUKONO MUNICIPAL LOT 3-NASUUTI-  
NAKABAGO-NTAWO, BAJJO-SEETA, SERADO LINK, KIGUNGA  
LINK (9.72KM) UNDER PROCUREMENT NO.  
KIRA/GKMA/WRKS/2023-2024/00014/3.**

**BEFORE: FRANCIS GIMARA S.C CHAIRPERSON; ENG.THOMAS  
BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA; PAUL  
KALUMBA AND CHARITY KYARISIIMA; MEMBERS.**

**A. BRIEF FACTS**

1. The Government of Uganda through the Ministry of Kampala Capital City and Metropolitan Affairs (MKCC&MA) received funding from the World Bank/International Development Association (IDA) to implement the Greater Kampala Metropolitan Area-Urban Development Program (GKMA-UDP).
2. Under the Greater Kampala Metropolitan Area-Urban Development Program, Kira and Mukono Municipalities were allocated funds for the Upgrading and Reconstruction of selected roads to bituminous standards. To execute the program, Kira Municipal Council was selected as the Lead Procurement and Disposing Entity for the impugned procurement.
3. Kira Municipal Council (the **Respondent**) through a bid notice published in Monitor newspaper of Tuesday, March 5, 2024, advertised/initiated a procurement for the Construction of selected roads in Kira and Mukono Municipal as follows;
  - (i) **Lot 1 for** Mbogo & Cyprian Kizito Roads (9.0Km), Kungu-Bivanju Road (2.3km) under procurement No. KIRA/GKMA/WRKS/2023-2024/00014/1.
  - (ii) **Lot 2 for** *Construction of selected roads Anthony-Kame, Kame Annex, Albertcook-Cathedral Rise, Kame-Nabuti-Katosi Road, Admin Link, Access Road, Link Road (8.68 Km) under procurement No. KIRA/GKMA/WRKS/2023-2024/00014/2*
  - (iii) **Lot 3 for** *-Nasuuti-Nakabago-Ntawo, Bajjo-Seeta, Serado Link, Kigunga Link (9.72km) under procurement No. KIRA/GKMA/WRKS/2023-2024/00014/3*
4. Regarding the procurement process in Lot 3, the Respondent on April 15, 2024, received 13(Thirteen) bids from; *Sterling Civil Engineering Ltd, Jilk Construction Co. Ltd (the **Applicant**), China Wu Yi Co. Ltd, Chongqing International Construction Co. Ltd, China Jianxi International Economic, China Communication Construction Company Ltd, Stars Group Ltd, Techno Three Uganda Ltd with Nashing Construction Pvt Ltd, Associated Construction Co (K) Ltd, Multiplex -Nyoro JV, China Railway 18<sup>th</sup> Bureau Group Ltd, China National Euro Technology and Docol and Tab Joint Venture.*
5. Upon completion of the evaluation of bids, the Respondent issued a Notice of Best Evaluated Bidder, which was displayed on May 3, 2024. The Notice stated that *China Communication*

*Construction Company Ltd* was the Best Evaluated Bidder at a contract price of Ugx 38,887,489,710/= for **Lot 3**.

6. The Best Evaluated Bidder Notice for **Lot 3**, that was displayed on May 3, 2024, stated that *Jilk Construction Co. Ltd* was disqualified on two (2) grounds namely, (i), that the Applicant's bid did not meet the criteria of at least Two contracts within the last Five years, each with a value of at least Uganda Shillings 40 billion and (ii), that the Applicant's bid did not provide sufficient evidence of compliance with Environment Safety and Health Safeguards (ESHS) safeguards in the implementation of its previous projects. The submission of Applicant on ESHS submission was determined to be unsatisfactory.
7. The Applicant by a letter dated May 5, 2024, referenced UGD/003/2024 filed a complaint before the Accounting Officer of the Respondent on May 6, 2024 and requested for an administrative review, challenging the award of Contract in *Lot 3-Nasuuti-Nakabago-Ntawo, Bajjo-Seeta, Serado Link, Kigunga Link (9.72km) under procurement No. KIRA/GKMA/WRKS/2023-2024/00014/3*.
8. On May 17, 2024, *China Communication Construction Company Ltd* filed a complaint before the Accounting Officer, challenging the award of Contract in **Lot 2**.
9. Regarding **Lot 2**, the Respondent had also issued a separate Notice of Best Evaluated Bidder, that was displayed on May 3, 2024. This Notice of Best Evaluated Bidder stated that *Sterling Civil Engineering Ltd* was the Best Evaluated Bidder for **Lot 2**, at a contract price of Ugx 46,997,041,406/=.
10. The Notice of Best Evaluated Bidder for **Lot 2** indicated that *China Communication Construction Company Ltd* was disqualified because.  
"the bidder quoted a competitive price of Ugx 46,077,467,815/= however the bidder is recommended for the contract award for **Lot 3**. This is consistent with value for money practices in public procurement for it yields the least opportunity cost to the employer"
11. The Accounting Officer made and communicated his decision and response to the complaint filed by *China Communication Construction Company Ltd* on May 22, 2024, regarding Lot 2. The Accounting Officer found merit in the Complaint and

determined the bid of *China Communication Construction Company Ltd* as the best evaluated bid for Lot 2.

12. The Contracts Committee of the Respondent sat on May 22, 2024, not only approved the findings of the administrative review committee on Lot 2, but also approved the recommendation to award the Contract in Lot 2 to *China Communication Construction Company Ltd*.
13. The Accounting Officer made and communicated his decision and response to the complaint regarding Lot 3 by Jilk Construction Co. Ltd (the Applicant) on May 22, 2024. The Accounting Officer found no merit in the Complaint of the Applicant.
14. The Accounting Officer also notified the Respondent's Head of Procuring and Disposing Unit, of the need to change the award in Lot 3 from *China Communication Construction Company Ltd* to *Sterling Civil Engineering Ltd* who was the 1<sup>st</sup> runner up in Lot 3 because the bidding document prohibited a bidder from being awarded a contract in more than one lot.
15. The Respondent's Head Procuring and Disposing Unit on May 22, 2024, then made submissions to the Contracts Committee, recommending the award of Contract in Lot 3 to *Sterling Civil Engineering Ltd*.
16. The Respondent's Contracts Committee at its sitting on May 22, 2024, awarded the Contract in Lot 2 to *China Communication Construction Company Ltd* at a bid price of Ugx 46,077,467,815/=
17. In the same sitting of May 22, 2024, the Respondent's Contracts Committee also awarded the Contract in Lot 3 to *Sterling Civil Engineering Ltd* at a bid price of Ugx 46,077,467,815/=
18. The Accounting Officer of the Respondent then issued a Notice of Best Evaluated Bidder for Lot 3 (Nasuuti-Nakabago-Ntawo, Bajjo-Seeta, Serado Link, Kigunga Link (9.72km) under procurement No. KIRA/GKMA/WRKS/2023-2024/00014/3). with a display period from May 23, 2024, to June 7, 2024. The new Notice stated that *Sterling Civil Engineering Ltd* was the Best Evaluated Bidder at a contract price of Ugx 43,795,375,917/= for Lot 3.

19. The new /current Notice of Best Evaluated Bidder for Lot 3 of May 23, 2024, still maintained that Jilk Construction Co. Ltd (Applicant) was disqualified on two grounds namely;
  - (i) that the bid of Jilk Construction Co. Ltd did not meet the criteria of at least Two contracts within the last Five years, each with a value of at least Uganda Shillings 40 billion,
  - (ii) That Jilk Construction Co. Ltd did not provide sufficient evidence of compliance with Environment Safety and Health Safeguards (ESHS) safeguards in the implementation of its previous projects. The submission of Jilk Construction Co. Ltd on ESHS submission was determined to be unsatisfactory the same reasons for disqualification of the Applicant as was stated in the Notice of Best Evaluated Bidder of May 3, 2024.
20. The Applicant being aggrieved by the decision of the Accounting Officer made on May 22, 2024, regarding Lot 3, filed the instant application with the Tribunal on June 6, 2024.

**B. APPLICANT'S SUBMISSIONS**

1. The Applicant contended that the Respondent erred when it rejected and eliminated the Applicant's bid on the basis that the Applicant allegedly did not meet the criteria of at least Two contracts within the last Five years, each with a value of at least UGX 40 billion as specified in the Bid Data Sheet and or Bidding Document.
2. The Applicant averred that the Respondent's Accounting Officer in his decision dated May 22, 2024, had departed from the reasons advanced in the Best Evaluated Bidder Notice and found that the Applicant had attained the threshold of Two contracts within the last Five years amounting to UGX 40 billion each.
3. The Applicant further submitted that the Accounting Officer having departed from the Best Evaluated Bidder Notice for Lot 3 of May 03, 2024, went ahead, and stated that the Applicant did not have specific experience in contracts of a similar nature and that it consequently was not compliant with the Bid documents.
4. The Applicant contended that the requirements in the bid document on similarity of experience stated the minimum key requirements to include upgrading/ reconstruction on not less

than 10 km. Therefore, in all the contracts executed by the Applicant had an element of road construction *similar* to the subject matter of the instant procurement for at least 10 Kms.

5. The Applicant argued that it was not a requirement of the bidding document state that the entire contract had to be a road construction contract.
6. The Applicant submitted that it had submitted 2 contracts as proof of its specific experience which had a component of road construction more than the 10 km.
7. The Applicant relied on the Contract between the Applicant and *Afrikon Limited* for *sheet piling and associated kora intake works* specifically para 3e at pages 1252 and 1242 under heading physical size-17 km) and the contract between the Applicant and *Kenya National Highway Authority* showing physical size of 15km and similar works as stated in pages 1261, 1262, 1263 among others to buttress its submission that the cited contracts had a component of road construction with key activities of gravel fill, rock fill, crushed stone subbase, asphalt concrete surfacing and culvert installation.
8. Regarding the disqualification on the grounds of Environmental safety and Health Safeguards, the Applicant contended its bid at pages 036 to 0412 of volume 1 complied with the requirement in the bidding document. The Applicant argued that most of the requirements with respect to ESHS were undertakings by the Applicant which would be monitored and supervised by the respondent and that any omission, on this aspect, if at all, should have been done through clarification which was never done.
9. On the issue of omission and failure by the Respondent to avail the Applicant with a summary of the evaluation process, a comparison of tenders, proposals including the evaluation criteria used as requested for by the Applicant for purposes of the administrative review process, the Applicant averred that the omission was erroneous since it contravenes the Bid document issued by the Respondent and was contrary to Section 47(1) & (2) (G) of the PPDA Act 2003 as amended. The Applicant argued that the refusal was an afterthought because the Respondent agreed to do so in its bidding document.

10. In response to the preliminary objection raised by the Respondent, the Applicant retorted that the Respondent's Accounting Officer communicated his Decision to the Applicant on 24<sup>th</sup> May 2024 and the Applicant filed its application on 6<sup>th</sup> June 2024, within 10(ten) working days as prescribed by law.
11. The Applicant contended that 3<sup>rd</sup> June 2024 was a public holiday and consequently not a working day and submitted that failure by the Accounting Officer to communicate a decision within the ten days specified in Section 89(7) should not be visited upon the Applicant.
12. In response to the Respondent's change of best evaluated bidder from *China Communications Construction Company Ltd* (CCCC) to *Sterling Civil Engineering Ltd*, the Applicant argued that CCCC did not file a complaint with the Accounting Officer of the Respondent, for administrative review of LOT 3 and there would be absolutely no basis for a Best Evaluated Bidder to file an application for administrative review since under *Section 89(1) of the Public Procurement and Disposal of Public Assets (Amendment), Act 2021*, since such a bidder would not be aggrieved by the decision of the Accounting Officer.
13. The Applicant contended that the alleged complaint by CCCC was never communicated to the Applicant and the newly issued notice of Best Evaluated Bidder dated May 23, 2023, was also never communicated to the Applicant until June 24, 2024, when the Respondent's Reply to the Application was served on the Applicant contrary to express provisions of the law and should therefore be disregarded by the Tribunal.
14. The Applicant prayed that its application be allowed, and, in the alternative, the Tribunal cancels the entire procurement considering the gross irregularities in the procurement process, citing the Tribunal's decision in ***EAA Co. Ltd Vs UNBS, Application No 21 of 2023***, to buttress its argument for cancellation of the procurement process.

### **C. RESPONDENT'S SUBMISSIONS**

1. The Respondent adopted its reply to the Application that had been filed before the Tribunal.
2. The Respondent raised a preliminary objection to the effect that the Application No. 31 of 2024 was filed out of time and is

therefore incompetent. The Respondent contended that the Application should have been filed with the Tribunal on May 27, 2024, than on June 6, 2024.

3. Regarding the merits of the Application, the Respondent contended that the two contracts submitted by the Applicant in proof of its specific experience being *Kenya National Highways Authority* and *National Irrigation Authority* contracts did not conform to the requirements of the bidding document and was not substantially responsive and was correctly rejected in accordance with ITB clauses 31.3 and 35.3 of the bidding document.
4. The Respondent submitted that the criteria stated in sub factor 6.2.7 on general experience required a bidder to have performed the role of contractor, subcontractor, or management contractor for the last 3 years prior to bid submission of April 15, 2024, with activity in the last 6 months of each year starting from April 14, 2021.
5. The Respondent argued that it reviewed the Applicant's bid and found that none of the contracts listed in Form 9 from pages 0481 to 0483 and 1494 to 1496 meet the requirement of 6.2.7 of the bid documents and that none of the contracts attached as evidence of general experience were performed in the last 3 years prior to bid submission, having a cut of date of April 14, 2021. As such, the Applicant's bid was nonresponsive to the requirements of the bidding document.
6. The Respondent pointed out that Applicant's contract for *Sheet piling and associated korakora intake works for bura irrigation and settlement scheme rehabilitation project with National Irrigation Authority* did not include any asphalt concrete works in contravention of the requirement of experience in asphalt concrete surfacing-15,000m<sup>3</sup> of 10,000m<sup>3</sup> annual average as required on page 57 of the bidding document.
7. The Respondent further argued that the Applicant's submitted contract for **performance-based maintenance of Ndenderu-Kamandura (B33) Road worth Kshs 639,433,894 (UGX 19,183,016,820) with Kenya National Highways Authority**, and the variation order dated August 12, 2021, indicated that the works constituted bituminous surface treatment and surface dressing and not asphalt concrete surfacing and that the value of works undertaken of UGX 19,183,016,820 was



- lower than the required minimum value of works of UGX 40 billion.
8. In specific response to the Applicant's claim that the Contract with *Kenya Ports Authority dated September 28, 2018, Tender Number KPA/084/2017-18/PDM with a value of Kshs. 1,027,016,902.00*, the Respondent contended that the contract was not similar to required works or genre of similar works as defined in subfactor 6.2.9 because its works were restricted to redevelopment of cruise ship terminal at berth No.1 Phase 1c, ground floor, departure and arrival, duty free, first floor, food court and offices, 2<sup>nd</sup> floor offices and meeting rooms and would not qualify for general experience evidence because it fell outside the requirement for execution in the last 3 years prior to bid submission, having a cut of date of April 14, 2021.
  9. In response to its refusal to avail the applicant with comparative tenders requested for, for purposes of administrative review, the Applicant relied on *Sections 47(2)(b)(iv)(C) and 89(4) of the Public Procurement and Disposal of Public Assets Act 2003* to argue that the respondent was under no legal obligation to avail a bidder who intends to apply for administrative review, with comparative tenders or the evaluation report. The Respondent cited the decision of the Tribunal in **Application No. 30 of 2021, Gat Consults Limited v National Water and Sewerage Corporation** to fortify its submissions on the issue.
  10. The Respondent therefore prayed that the Application when determined by the Tribunal on merits, should be dismissed with costs, that the Tribunal should allow the procurement process to be continued to its logical conclusion.

#### **D. ORAL HEARING**

1. The Tribunal held an oral hearing on June 24, 2024, via Zoom videoconferencing platform. The appearances were as follows:
  - 1) Mr. *Ojambo Robert Mangeni* represented the Applicant as Counsel. In attendance was *Doris Kanganji*, the Chief Technical Officer of the Applicant.
  - 2) Mr. Yiga Benon the Town Clerk represented the Respondent.

In attendance were *Engineer James Jolaba* the Municipal Engineer, *David Mayega* the Senior Finance Officer, *Catherine Nambwere* the Head of Procurement and Disposal Unit and *Buguma Aggrey* the Senior Procurement Officer of the Respondent.

From the *Ministry of Kampala Capital City and Metropolitan Affairs*, in attendance were *Dr Bruce Rukundo* an environmental specialist, *Esereda Bakisula Mutibwa* a Procurement Specialist and *Engineer Dennis Adrole* the Infrastructure Development Specialist.

- 3) *Sterling Civil Engineering Ltd*, the Best Evaluated Bidder was represented was represented by *Gennaro Sirgiovanni* the Managing Director, *Rajendra Prasad* the Regional Finance Officer and *Denis Robins Katumwa* the Contracts Manager.

#### **E. RESOLUTION**

1. The Application and the Response to the Application raised 3 grounds or issues that the Tribunal has framed as follows.
  - 1) *Whether the instant application before the Tribunal is competent?*
  - 2) *Whether the Respondent erred when it omitted or refused to avail comparative tenders requested for by the Applicant, for purposes of administrative review*
  - 3) *Whether the Respondent erred when it disqualified the Applicant's bid*
  - 4) *What remedies are available to the parties?*

#### **Issue No1: Whether the instant application before the Tribunal is competent?**

1. The competence of an application is *interalia*, determined by whether it was filed within the timelines stipulated by law or whether the application has been rightfully filed before the Tribunal.
2. The Applicant by a letter dated May 5, 2024, referenced UGD/003/2024 filed a complaint before the Accounting Officer of the Respondent on May 6, 2024, and requested for an administrative review.
3. Section 89(7) of the *Public Procurement and Disposal of Public Assets Act* requires the Accounting Officer to make and

communicate a decision within ten days from receipt of the complaint.

4. The Accounting Officer made and communicated his decision and response to the Applicant's Compliant on May 22, 2024, upholding the recommendations of the evaluation committee and dismissing the compliant for lacking merit. This letter was received by the Applicant on May 24, 2024. See *paragraph F [Sixthly] on page 2 of the Applicant's written submissions.*
5. The time of reckoning for investigating, making, and communicating an administrative review decision by the Respondent's Accounting Officer for a complaint lodged on May 6, 2024, commenced on **May 7, 2024**, and elapsed on **May 16, 2024**.
6. It is our finding that the Accounting Officer's decision made and communicated to the Applicant on **May 24, 2024**, was made in breach of the law **and is no decision at all**. See Section 89(7) of the *Public Procurement and Disposal of Public Assets Act 2003* and ***Application No. 29 Of 2024- Clear View Investments Ltd Vs Mbarara University School of Science and Technology.***
7. Accordingly, where an Accounting Officer does not make a decision or communicate a decision within the period specified in subsection (7), the aggrieved bidder is expected to file an application to the Tribunal, in accordance with Part VIIA of the Act, within ten days from the date of expiry of the period within which the Accounting Officer ought to have made and communicated his administrative review decision. See **Sections 89(8), 91I (1) (a) and 91I(2)(b) of the Public Procurement and Disposal of Public Assets Act 2003.**
8. Under **Section 91I (1)(a)-(c)** of the ***Public Procurement and Disposal of Public Assets Act 2003***, the persons permitted to apply to the Tribunal for review of a decision of a procuring and disposing entity are ;
  - a) *a bidder who is aggrieved, as specified in section 89 (7) or (8);*
  - b) *a person whose rights are adversely affected by a decision made by the Accounting Officer; and*
  - c) *a bidder who believes that the Accounting Officer has a conflict of interest as specified in section 89 (9).*

9. Although the applicant clearly states that the instant application is brought under **Section 91I (1)(b)** of the **Public Procurement and Disposal of Public Assets Act 2003**, the High Court of Uganda has clearly guided that access to the Tribunal pursuant to Section 91I (1)(b) is not available to a person who participated in a procurement process as a bidder. **Mbarara City and MBJ Technologies Vs Obon Infrastructure Development JV, High Court (Civil Division) Civil Appeal No. 45 of 2021**
10. A perusal of the Applicant's *brief statement for reasons for the Application* on page 3 of the application, states as follows  
  
*"The Applicant being dissatisfied with the decision of the Procuring and Disposal Entity to eliminate and or reject its bid and name China Communications Construction Company as the Best Evaluated Bidder, applied to the Accounting Officer of the Procuring and Disposing Entity to review its decision"*
11. It is therefore clear that the applicant is contesting the respondent's award of contract to *China Communication Construction Company Ltd* as the Best Evaluated Bidder **for Lot 3** and the Accounting Officer's decision dated May 22, 2024.
12. Accordingly, the time of reckoning for the Applicant to file an application before the Tribunal commenced on **May 17, 2024** and elapsed on **May 26, 2024**.
13. It is trite to note that May 26, 2024, being the last day of the period on which the Applicant ought to have filed an application to the Tribunal, it is an "excluded day" in computation of time. Accordingly, the next following day May 27, 2024, being a Monday and a working day becomes the last day for the Applicant to have lodged an Application to the Tribunal. See *Section 34(b) of the Interpretation Act, Cap 3* read together with *Regulation 33(b) of the Public Procurement and Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016* and *Section 2(1) of Public Holidays Act, cap 255, Application No. 33 of 2021, Super Taste Limited v Bank of Uganda, page 10, para 14.*
14. We have observed that *China Communication Construction Company Ltd* was replaced by *Sterling Civil Engineering Ltd*, as the best evaluated bidder in the Best Evaluated Bidder Notice dated May 23, 2024, for **Lot 3**, because of a successful administrative review complaint to the Accounting Officer by

*China Communication Construction Company Ltd* in **Lot 2**. The reasons for the elimination of the Applicant's bid remain unchanged in the new Best Evaluated Bidder Notice for **Lot 3** dated May 23, 2024.

15. The new Best Evaluated Bidder Notice for Lot 3 issued on May 23, 2024, does not validate, revive, or breathe new life into the Application No. 31 filed by the Applicant before the Tribunal because it was not challenged by the Applicant when the instant Application was filed on June 6, 2024.
16. To that extent, the Application No. 31 of 2024 lodged with the Tribunal on **June 6, 2023**, is out of time contrary to **sections 89 (8) and 911 (2) (b)** of the ***Public Procurement and Disposal of Public Assets Act 2003***.
17. Timelines within the procurement statute were set for a purpose and are couched in mandatory terms. There is no enabling provision within the Public Procurement and Disposal of Public Assets Act that accords the Tribunal power to enlarge or extend time. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. See ***Eclipse Edisoil JVC Ltd vs Napak District Local Government, High Court (Civil Appeal) No. 05 of 2024***, (arising out of Tribunal Application No. 33 of 2023- *Eclipse Edisoil JVC Ltd vs Napak District Local Government*) and **Application No. 25 of 2024- Achelis Uganda Ltd Vs Ministry of Lands, Housing and Urban Development**
18. The upshot of finding is that the instant Application is incompetent, and, in the circumstances, there is no need for the Tribunal to delve into the merits of the Application.
19. **This issue is resolved in the negative.**

**F. DISPOSITION**

1. The Application is struck out.
2. The Respondent may continue with the procurement process to its logical conclusion.
3. The Tribunal's suspension order dated June 7, 2024, is vacated.
4. Each party shall bear its own costs.

Dated at Kampala this 27<sup>th</sup> day of June 2024.



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**FRANCIS GIMARA S.C  
CHAIRPERSON**



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**THOMAS BROOKES ISANGA  
MEMBER**



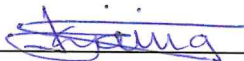
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**GEOFFREY NUWAGIRA KAKIRA  
MEMBER**



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**PAUL KALUMBA  
MEMBER**



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**CHARITY KYARISIIMA  
MEMBER**